

# **PUBLIC WORKS CONTRACT / PREVAILING WAGE LAW FREQUENTLY ASKED QUESTIONS**

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**THE FOLLOWING ARE FREQUENTLY ASKED QUESTIONS AND ANSWERS. NOTHING ON THIS WEBSITE IS INTENDED AS LEGAL ADVICE. RESPONSES MAY BE DIFFERENT DEPENDING ON THE FACTS AS WE UNDERSTAND THEM, EMPLOYMENT CONTRACT AND/OR THE PRESENCE OF A COLLECTIVE BARGAINING AGREEMENT. IF YOU NEED LEGAL ADVICE, PLEASE CONSULT AN ATTORNEY.**

## **1) Who do I contact if I have a question regarding prevailing wage regulations?**

If you have a question about complying with the prevailing wage regulations (occupations, payroll forms, payment of fringe benefits, travel or per diem, etc.), you should contact the Labor Standards Bureau, Wage & Hour Unit. Call (406) 444-5600 and ask to speak to a Prevailing Wage Compliance Specialist.

## **2) What are public works contracts?**

Contracts for construction services or nonconstruction services in excess of \$25,000 let by the state, county, municipality, school district, or political subdivision where public funds are used.

## **3) What is “prevailing wage”?**

Prevailing wage is the minimum wage amount (basic hourly rate and fringe benefits) that workers on Montana public works construction projects or nonconstruction service contracts must be paid. It is required by law and determined by actual hours worked in a particular occupational title (classification/trade) throughout the state.

## **4) How does the prevailing wage affect me?**

Montana’s prevailing wage law ensures that the ability to get a public works contract is not based on paying lower wage rates than a competitor. It requires bidders on contracts pay a set rate of compensation, including benefits and that at least 50% of the employees of each contractor working on the job be bona fide Montana residents.

## **5) What is a “fringe benefit”?**

A fringe benefit is the published amount which may be paid irrevocably into a bona fide program, plan or fund such as a health and welfare or retirement trust, or paid in cash directly to the worker.

**6) What is a “wage rate schedule”?**

A wage rate schedule is a publication of job classifications/trades and corresponding wages rates that must be included in all public works contracts and the bid specifications for those contracts.

**7) What is a “certified payroll”?**

A certified payroll is a copy of the weekly payroll which the employer has signed to affirm that:

- The payroll is correct and complete;
- The job classifications conform with the work performed by the worker; and
- Wages paid are not less than the applicable rates contained in the wage rate schedule.

**8) If there is an increase in the published prevailing wage rate, is my employer required to pay the increased wages?**

No. The rates in effect at the time the project is advertised for bid are the applicable rates to be paid throughout the duration of the project.

**9) As an apprentice, must I be paid the prevailing wage rate?**

Yes, as an apprentice registered or recognized by the Apprenticeship and Training Bureau of the Department of Labor and Industry or the federal Bureau of Apprenticeship and Training working on a public works project you can be paid a percentage of the standard prevailing rate of wages for construction services as listed in the apprenticeship agreement. For general questions concerning apprenticeship, please contact the Apprenticeship & Training Bureau at (406) 444-3998.

**10) How can a contractor take credit for allowable fringe benefits?**

To qualify for any credit, the fringe benefit plan must meet all of the following requirements:

- Contributions must be made regularly and at least on a quarterly basis.
- Contributions made for prevailing wage work may not be used to fund the plan or program for periods of non-prevailing wage rate work.
- Contributions must not be required by law (such as taxes, workers' compensation, etc.).
- Contributions must be irrevocable and for the employee's benefit.

**11) If my employer does not offer any bona fide fringe benefit program, plan or fund, am I entitled to my fringe benefits in cash?**

Yes, if an employer does not offer any bona fide fringe benefits to an employee, the entire hourly fringe benefit rate must be paid to the worker as wages on regular payroll dates. All hourly fringe benefits that are paid as wages to an employee must be identified separately from the hourly base wages on certified payroll reports.

**12) How is overtime computed?**

Compensation for **all** hours worked in excess of 40 hours during any one week should not be less than one-and-one-half times the basic hourly rate of pay. If in a given week an employee works at varying rates, the employer would need to determine the weighted average regular rate for the week or pay the overtime at the highest rate for the week. Overtime is calculated on the base rate, not the fringe benefit amount.

**13) How often does a worker on a public works project need to be paid?**

A contractor or a subcontractor shall pay employees receiving an hourly wage on a weekly basis.

**14) How are prevailing wages set?**

The Labor Standards Bureau, Wage & Hour Unit of the Department of Labor and Industry conducts surveys to establish the prevailing wage rates for construction and nonconstruction services. If you have any questions specifically about the wage rates in their publication, please contact the Labor Standards Bureau, Wage & Hour Unit at (406) 444-1741.

**15) When are prevailing wage rates established?**

All construction and nonconstruction wage rates are established yearly.

**16) How is a prevailing wage rate schedule obtained?**

Prevailing wage rate schedules may be obtained upon request. Contact the Department of Labor and Industry, Labor Standards Bureau, Wage & Hour Unit at (406) 444-5600, or at <http://erd.dli.mt.gov/laborstandard/prevwage/state.asp>.

**17) Do contractors and subcontractors have to keep timecards and payroll records?**

Yes. All contractors, subcontractors and employers performing work on public works contracts shall make and maintain records necessary to determine whether the prevailing rate of wage and overtime has been or is being paid to employees performing work on the public work projects. These records are to be maintained for a period of three years after completion of the work performed on each project.

**18) What is the penalty for a violation of the Act?**

An employer that pays employees at less than the prevailing wage shall forfeit to the employee the amount of wages owed plus \$25.00 per day for each day the employee was underpaid. The employer shall also forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees and court costs. There are also fines of \$1,000.00 for failing to comply with other areas of the act and \$10,000.00 for gross negligence.

**19) Where can I find the prevailing wage laws?**

Montana Codes Annotated, Title 18, Chapter 2, Part 4 – Special Conditions – Standard Prevailing Rate of Wages.

**20) How do I determine the prevailing wage for the job I'm working on?**

Each contractor must post at a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits including travel and per diem to be paid to the employees.

**21) Who is required to determine work classification?**

Contractors and subcontractors shall classify each employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification or type of employee established by the commissioner.

**22) Should I keep my own time and classification records?**

Yes! Always keep your own record of hours and type of work performed.

**23) How do I file a wage claim?**

The law provides that workers who have not received the prevailing wage rate on a public works contract may file a complaint with the Department of Labor and Industry, Wage and Hour Unit. A wage complaint form can be obtained at your local Job Service or from the Wage and Hour Unit by calling (406) 444-5600 or downloading from the DLI website at [www.mtwagehourbopa.com](http://www.mtwagehourbopa.com).

**24) What happens when a complaint is filed?**

The Labor Standards Bureau, Wage and Hour Unit, will conduct an investigation to determine the merits of the complaint and issue a determination of its findings. If a violation has been determined, the contractor, subcontractor or employer may be subject to penalties.

**25) Does it cost to file a claim?**

No.

**26) How long does it take for my claim to get settled?**

There is no specific time mandated to settle a claim. Each claim is different, but the Wage and Hour Unit makes every effort to obtain necessary documentation as promptly as possible to determine if any back wages and penalties are due.

**For more information:**

If you have a question not answered here, you may email the question to [rsiemers@mt.gov](mailto:rsiemers@mt.gov) or call the Wage and Hour Unit at 406-444-5600.